

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CURTIS C. PHILLIPS, JR.

v.

JOHN C. THOMAS, et al.

:
:
:
:
:

CIVIL ACTION
NO. 14-5086

ORDER

AND NOW, this 3rd day of March, 2016, upon consideration of a motion to dismiss, or in the alternative, for summary judgment brought on behalf of defendants John Thomas, Michael Criscitello, Samuel Allen, Major Aponte, Captain Morris, Corrections Officer Coons, Lt. Thompson, Lt. B. Adams, Corrections Officer Colon, Sgt. Spells, Ms. Williams, Ms. Morales and Corrections Officer McClain with respect to the claims set forth in the second amended complaint of plaintiff Curtis C. Phillips, Jr., Dkt. No. 21., and plaintiff's response thereto, Dkt. No. 22, and consistent with the accompanying memorandum of law, it is ORDERED that:

1. Defendants' motion is GRANTED to the extent that it seeks to dismiss plaintiff's claims against defendants in their official capacity. Plaintiff's official capacity claims are DISMISSED;
2. Defendants' motion is GRANTED to the extent that it seeks to dismiss Claim 1 (regarding plaintiff's diet), Claim 2 (regarding plaintiff's access to medical care), and Claim 3 (regarding alleged tampering with plaintiff's legal mail) set forth in plaintiff's second amended complaint for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Claim 1, Claim 2 and Claim 3 are DISMISSED;
3. Plaintiff's claim against Doctor "Harewomb" is DISMISSED without prejudice for plaintiff's failure to serve Doctor "Harewomb" in accordance with Rule 4(m)

of the Federal Rules of Civil Procedure; and

4. Claim 4 of plaintiff's second amended complaint (regarding the alleged use of excessive force) is DISMISSED for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B); and
5. Defendants' motion is DENIED in all other respects.

Plaintiff may file a third amended complaint on or before April 4, 2016. Any amended complaint shall not include a request for a specified amount of monetary damages. If plaintiff files an amended complaint, defendants shall file a responsive pleading within fourteen days thereafter.

s/Thomas N. O'Neill, Jr.
THOMAS N. O'NEILL, JR., J.